

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1350 of 1996

in

CIVIL APPLICATION No 7958 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAGINBHAI CHHOTUBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR SB VAKIL for Appellants
Mr.S.T.Mehta, A.G.P. for the Respondents.

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 06/04/98

ORAL JUDGEMENT

Admitted. Mr.S.T.Mehta, Assistant Government

Pleader waives service of notice of admission. In the facts and circumstances of the case, the matter is taken up to day for final hearing.

These Letters Patent Appeal is filed against an order passed in Special Civil Application No.5804 of 1984 on September 14, 1996 and in Civil Application No.7958 of 1996 on October 22, 1996.

The main matter i.e. Spl.C.A.No.5804 of 1984 was filed by the appellant-petitioner which was dismissed for default. It was stated in the order that the matter was called out in the first round, second round and lastly in the third and since nobody appeared on behalf of the petitioner, Special Civil Application No. 5804 of 1998 was dismissed for non-prosecution. Rule which was issued in 1984 came to be discharged.

When the learned counsel for the appellant-petitioner came to know about the fact of the petition being dismissed for default, he filed Civil Application No. 7958 of 1996 wherein it was mentioned that the learned counsel for the petitioner was busy in other court. The learned Single Judge was of the view that "Even if it is accepted that the advocate for the applicant was busy in First Court on 13.9.1996 how it can be said to be a ground much less a sufficient ground for absence on 14.9.96 when this Special Civil Application has been dismissed."

In the facts and circumstances of the case, in our opinion, the learned Single Judge ought to have disposed of the matter on merits. The learned counsel for the appellant stated that 14th September 1996 was non-working day being second saturday of the month. In the facts and circumstances of the case, in our opinion the learned Single Judge ought to have disposed of the matter on merit. hence, this Letters Patent Appeal is allowed. The order passed by the learned Single Judge in Special Civil Application No.5804/96 and Civil Application No.7958 of 1996 are hereby quashed and set aside. The matter will now be placed before an appropriate court taking such matters. We may state that we have not expressed any opinion on merits and as and when the matter will be placed for hearing, the learned Single Judge will decide on its own merits. LPA is accordingly allowed, with no order as to costs.

(A.L.DAVE J.)